

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6092 of 2007()

CRIME NO.26/05 OF KARAMANA POLICE STATION, THIRUVANANTHAPURAM

: PETITIONER:

SHIBU, S/O. SIVANKUTTY,
AGED 28 YEARS,PONAYIL VEEDU,POOZHICKUNNU ESTATE P.O
THIRUVANANTHAPURAM.

BY ADV. SRI.K.T.SHYAMKUMAR

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.6092 of 2007

Dated this the 8th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. He faces allegations for offences punishable under Sections 457 and 394 I.P.C. The alleged incident took place on 17.9.05. The crux of the allegations is that the accused went to the house of the defacto complainant and snatched the gold chain worn by the defacto complainant. The 1st accused is named in the F.I.R. The petitioner is not named in the F.I.R. By report dated 19.09.05, the petitioner has been arrayed as the 2nd accused. That report had reached the court on 30.09.05 as can be seen from Annexure-A2 produced by the petitioner. The petitioner has not been arrested so far. The 1st accused was arrested in another crime. His arrest was recorded in this crime. He was interrogated. His interrogation confirmed the complicity of the petitioner herein. The petitioner has not been arrested so far. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has not been arrested so far. Admittedly attempts have been made to arrest the petitioner. The petitioner apprehends imminent arrest.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the police have wanted to arrest the petitioner from 19.09.07. He could not be arrested as he was not available. Subsequent interrogation of the defacto complainant and the interrogation of the 1st accused after arrest, have confirmed the complicity of the petitioner. The petitioner has to be arrested and interrogated as the stolen property has not been recovered yet. The petitioner will have to be exhaustively interrogated to ascertain the truth. The petitioner may not, in these circumstances, be granted anticipatory bail, submits the learned Public Prosecutor .

4. Having considered all the relevant inputs, to which I have made brief reference already, I am not persuaded to agree that there are any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sections 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction. He must co-operate with the investigation. He must then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I

may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-